

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRIAN WATSON, et al.,		:	
	Plaintiffs,	:	
		:	
-against-		:	20 Civ. 4572 (LGS)
		:	
LEXUS OF MANHATTAN,		:	<u>ORDER</u>
	Defendant.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on November 18, 2020, Plaintiffs filed a letter motion to compel, seeking production of all text messages sent to Honda customers, and requesting leave to file a motion for sanctions (Dkt. No. 50). Defendant filed a response (Dkt. No. 52), and Plaintiffs filed a reply (Dkt. No. 53);

WHEREAS, per the November 23, 2020, Order, Defendant filed a supplemental letter, identifying its response to a customer who responded, “Yes, you may text me,” in response to the text message asking about maintenance of their vehicle (the “Maintenance” text message), a text message asking about a New York State Inspection of their vehicle (the “State Inspection” text message), and also, a text message describing a special service offer (“Special Service” text message). The letter also provided other preliminary information, including whether Plaintiffs received the State Inspection and/or Special Service text messages. It is hereby

ORDERED that Plaintiffs’ discovery application and request for leave to file a motion for sanctions is DENIED, and the discovery conference scheduled for December 10, 2020, at 10:50 a.m. is CANCELLED.

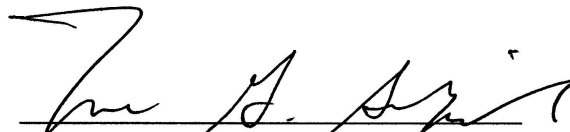
The State Inspection and Special Service text messages are not “identical variants” of the Maintenance text messages, as they were not in practice treated by Defendants as the same

message. Thus such discovery is neither relevant nor proportional to the claims alleged in the First Amended Complaint, which refer to the Maintenance text messages only, and for the same reasons, there is no basis to impose sanctions on Defendant for failing to produce such text messages. Prejudice against Defendant also weighs in favor of denying the discovery application, as the request was made near the end of fact discovery, and after Plaintiffs' class certification motion filing and Defendant's obtaining expert opinions. This ruling is without prejudice to any settlement class definition that the parties may agree on, should the parties desire to resolve the matter in that manner. It is further

ORDERED that Plaintiffs' class certification motion briefing is no longer stayed. Defendant shall file its opposition by **December 18, 2020**, and Plaintiffs' reply is due **January 7, 2021**.

The Clerk of Court is respectfully directed to close Dkt. No. 50.

Dated: December 9, 2020
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE